

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04

PLR-116648-08

Date:

September 19, 2008

Legend:

Taxpayer 1	=
Taxpayer 2	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=
X	=

Dear :

This is in response to a letter dated April 4, 2008, and subsequent correspondence, from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate generation-skipping transfer (GST) exemptions to a trust.

The facts submitted and the representations made are as follows. In Year 1, on Date 1, Taxpayer 1 formed and funded Trust, an irrevocable trust, for the benefit of Taxpayer 1's issue. Trust has GST potential.

Taxpayers 1 and 2 retained an accountant to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, reporting the transfer to Trust. On the Forms 709, Taxpayers 1 and 2 consented to have gifts made by either to third parties during Year 1 as made one-half by both pursuant to § 2513. In preparing the Forms 709, the accountant inadvertently failed to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to the transfer to Trust.

In Year 2, as a result of an audit by the Internal Revenue Service the value of the property transferred to Trust was determined to be \$X. During the audit, the attorney for

Taxpayers 1 and 2 discovered the failure to allocate GST exemption to the transfer to Trust.

On Date 2, in Year 2 (a date prior to the enactment of § 2642(g)), Taxpayers 1 and 2 filed Forms 709 on which they made late allocations of their GST exemptions to the transfer to Trust and pursuant to § 26.2642-2(a)(2), the taxpayers elected to treat the allocations as having been made on Date 3.

It has been represented that since its creation, no distributions to skip persons have been made from Trust.

The following rulings are requested: (1) an extension of time pursuant to §§ 2642(g) and 301.9100-3 to allocate Taxpayer 1's and Taxpayer 2's GST exemptions to the transfer to Trust, effective as of Date 1 and based on the value of the transfer on Date 1; and (2) a ruling that pursuant to § 26.2632-1(b)(4)(i) the late allocations of Taxpayer 1's and Taxpayer 2's GST exemptions are deemed to be void.

Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a) (in effect at the time of the transfer) provides that for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) - (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall

include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time of sixty (60) days from the date of this letter is granted to allocate Taxpayer 1's and Taxpayer 2's available GST exemptions to the Date 1 transfer to Trust. The allocations will be effective as of Date 1 and will be based on the value of the transfer on Date 1, \$X. The allocations should be made on supplemental Forms 709 for Year 1 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the return.

Because the allocations will be effective as of Date 1, the allocations will be deemed to precede in time the allocations Taxpayers 1 and 2 made on their respective Forms 709 filed on Date 2. To the extent Taxpayers 1's and Taxpayer 2's Date 2 allocations exceed the amount necessary to obtain an inclusion ratio of zero with respect to Trust, under § 26.2632-1(b)(4)(i), such allocations are void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes